



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,842	11/24/2003	David Alan Oshinsky	COMMV.005C1	3613
20995	7590	07/17/2007	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			ALAM, SHAHID AL	
			ART UNIT	PAPER NUMBER
			2162	
			NOTIFICATION DATE	DELIVERY MODE
			07/17/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
eOAPilot@kmob.com

Office Action Summary	Application No.	Applicant(s)
	10/720,842	OSHINSKY ET AL.
	Examiner	Art Unit
	Shahid Al Alam	2162

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 23 April 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1, 3 – 6, 9 and 11 – 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1, 3 – 6, 9 and 11 – 22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

DETAILED ACTION

1. Applicant's arguments filed on April 23, 2007 with respect to claim 1, 3 – 6, 9 and 11 – 22 have been fully considered but they are not persuasive for the following reasons.
2. Applicants' argue that neither Mutalik, Kitain, nor the combination thereof, teaches or suggests the data retrieval system having three computing devices, wherein one of the computing devices stores a storage and backup map and the other a data index on the computing device; the Mutalik system does not appear to have any teaching or suggestion of the two-tiered approach of the system; the Kitain system does not appear to include a storage and backup map and a data index on the computing device; and neither Mutalik, Kitain, nor the combination thereof, teaches or suggests the data retrieval system having a plurality of computing devices communicatively coupled to a plurality of storage media retrieval module.

Examiner respectfully disagrees all of the allegations as argued. Examiner, in his previous office action, gave detail explanation of claimed limitation and pointed out exact locations in the cited prior art.

Examiner is entitled to give claim limitations their broadest reasonable interpretation in light of the specification. See MPEP 2111 [R-1]

During patent examination, the pending claims must be 'given the broadest reasonable interpretation consistent with the specification.' Applicant always has the opportunity to amend the claims during prosecution and broad interpretation by the

examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 162 USPQ 541,550-51 (CCPA 1969).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Mutalik's teaches of a file management system for backing up data stored on a mass storage subsystem in response to file management commands. The mass storage subsystem stores data on at least one storage device, said storage device including a series of blocks. The file management system comprises an operating system-independent file map, a file management command receiver module, and a file management command execution module. The operating system-independent file map stores information identifying, for each file, block information identifying blocks on which the file is stored. The file management command receiver module receives a file management command. The file management command execution module executes the file management command in relation to the operating system-independent file map. Mutalik's teachings anticipate applicant's claimed limitation.

In Figure 1, Mutualik system teaches a functional block diagram of a digital data processing system 10 including an arrangement for backing up data, constructed in accordance with the invention. With reference to FIG. 1, digital data processing system 10 includes **host computer 11** (computer one), **one or more mass storage subsystems** (computer three) generally identified by reference numeral 12, a **backup server 13 (computer two)**, and **one or more backup data stores** generally identified by reference numeral 14. The host computer 11 operates as a backup client, executes one or more applications, generally identified by reference numeral 17, which make use of the data stored in the mass storage subsystems 12, execution occurring under control of an operating system 18.

Mutalik teaches in Figure 3, File map utilization module to receive file, retrieves the file map entry. Mutualik, also teaches in Figure 5A, File Map utilization module enables the Mass Storage Subsystem to retrieve an amount of data corresponding to the value generated.

Mutalik's system clearly teaches a two-tiered approach of the computer system and the above argument as argued by the Applicant and as taught by the instant application.

As per Applicant's argument, Kitain system does not appear to include a storage and backup map and a data index on the computing device.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ

871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Examiner uses Kitain for different reason and not for a storage and backup map and a data index on the computing device as wrongfully argued by the Applicant.

Nevertheless, Kitain clearly teaches a web server 4, user computer 6, user computer 8 and so on; see Figure 1.

Kitain teaches that the information contained in the form is indexed in the relational database 11 to allow retrieval of the report by searching on such fields.

For the above reasons, Examiner believed that rejection of the last Office action was proper.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 3 – 6, 9 and 11 – 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,161,111 issued to Madhav Mutalik et al. (“Mutalik”) and in view U.S. Patent Number 5864,871 issued to Eduard Kitain et al. (“Kitain”).

With respect to claim 1, Mutalik teaches a data retrieval system comprising:

the first computing device (host) having a processor that supports operation of a software application for retrieving data (see abstract; column 2, lines 47 – 54; column 3, lines 15 – 27, 40 – 42; column 4, lines 40 – 49 and column 9, lines 33 – 45);

the second computing device (server) communicatively coupled to the first computing device and to one or more storage media for storing the data (column 4, lines 1 – 5 and column 5, lines 31 – 65);

a third computing device communicatively coupled to the second computing device, the third computing device storing a storage and backup map that maps the data to the second computing device (see Figure 1 and corresponding text and also column 8, lines 50 – 63); and

a data index stored on the second computing device that indicates a particular location of the data on the one or more storage media that is to be retrieved (column 8, lines 50 – column 9, line 10 and lines 33 – 67 and column 13, lines 1 – 19).

Mutalik teaches Host computers and Server computers and these computers are connected to the Mass Storage Subsystem. Each storage subsystem has a control

circuitry that is connected with Host computer and Server computer (see column 4, lines 1 – 29). Mutualik does not explicitly teach an interface module that is connected to the computer as claimed.

Kitain teaches claimed an interface module that is connected to the computer (column 46, lines 41 – 47).

It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to combine the teachings of Kitain with the teachings of Mutualik, because combination would provide an Internet information delivery system that has a secure but flexible password control mechanism so that information is provided only to users who are authorized to receive it, that efficiently retrieves any requested information, and that customizes the views of information provided to users in a flexible and robust manner (column 3, lines 17 – 23).

As to claims 3 and 4, the software application interoperates with an interface module, with a backup retrieval module and a file system program (see Figure 1 & 5A; Mutualik).

As to claims 5 and 6, the first computing device further comprises a file browser that is dynamic and changes to reflect information regarding the data to be retrieved, may be modified to display information regarding data to be retrieved specified by a user (see Figure 1 & 5A; Mutualik).

As to claim 9, a user may interact with the file browser to define a temporal range that specifies certain data to be retrieved (see Figure 1 & 5A; Mutualik).

As to claim 11, the file browser is Window Explorer (see Figure 1 & 5A Mutalik and also see column 1, line 67 – column 2, line2; Kitain).

As to claim 12, the first computing device is capable of retrieving the data without knowing the location of the data when the data is requested by the software application (Kitain: column 18, line 61 – column 19, line 4).

As to claim 13, the first, second and third computing devices are located remotely to each other and are communicatively coupled through a network (Kitain: Figure 1).

The subject matter of claims 14 – 17 and 18 – 22 are rejected in the analysis above in claims 1, 3 – 6, 9 and 11 – 13 and these claims are rejected on that basis.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contact Information

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahid Al Alam whose telephone number is (571) 272-4030. The examiner can normally be reached on Monday-Thursday 8:00 A.M.- 4:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Shahid Al Alam
Primary Examiner
Art Unit 2162

July 6, 2007